IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 8.11.2006

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THE HONOURABLE MR.JUSTICE R.REGUPATHI

CRL.O.P.NO.14408 OF 2002
AND
CRL.M.P.NO.5731 OF 2002

Rajiv Bhatnagar .. Petitioner

Vs.

State rep. by
the Inspector of Police,
Special Police Establishment,
Central Bureau of Investigation,
Anti Corruption Branch,
III Floor,
Shastri Bhawan,
Chennai-600 006.
R.C.No.53(A)/1993 .. Respondent

This criminal original petition is preferred under Section 482 Cr.P.C and Section 19 of the Prevention of Corruption Act, 1988 to call for the records in C.C.No.201 of 1997 pending on the file of the learned Principal Special Judge for CBI Cases (IX Additional City Civil Court), Chennai-104 (Now the case is transferred to X Additional Special Court for CBI Cases) and quash the charges framed against the Accused No.1 in C.C.No.201 of 1997.

For Petitioner : Mr.A.V.Somasundaram
for M/s.Lakshmipriya Associates

For Respondent : Mr.N.Chandrasekaran,
Spl.P.P. For CBI.

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ORDER

The petitioner is the first accused among four accused for an offence punishable under Sections 120-B and 409 IPC and under Section 13(1)(c) and 13(1)(d) of Prevention of Corruption Act pending on the file of the learned Principal Special Judge for CBI Cases, Chennai in C.C.No.201 of 1997.

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2.Pending enquiry, discharge application has been filed by the petitioner and after hearing both parties, the same was dismissed. Subsequently, charges were framed against the petitioner. Aggrieved against the framing of charges, the present petition to quash the proceedings has been filed before this Honourable Court.

3.The learned counsel for the petitioner submits that sanction in the instant case has been given by the Chief General Manager, but he is not the competent authority to accord sanction. The Chairman-cum-Managing Director of the Bank is the competent authority. The sanctioning authority is lower in rank and under such circumstances, prejudice has been caused to the petitioner. The sanctioning authority was not the Chief General Manager at the time of commission of offence. To substantiate his contention, the learned counsel for the petitioner relied on a judgment of the Supreme Court reported in 2005(7) Supreme 121 (STATE OF KARNATAKA THROUGH CBI VS. C.NAGARAJASWAMY) and in the head note, it has been stated as follows:

> "Trial Court after recording evidence of witnesses found that sanction for prosecution was illegal and discharged accused without recording any finding when prosecution proved charge beyond reasonable doubt-Prosecution filed fresh charge-sheet after obtaining an order of sanction-High Court allowing quashing petition held that when an accused faced full-fleged trial, trial Court must either record a judgment of conviction or acquittal and accused could not be discharged-Appeal-Grant of proper sanction by competent authority was a *sine qua non* for taking cognizance of offence-High Court was not right in its finding that Trial Court was bound to record either judgment of conviction or acquittal even after holding that sanction was not valid-Impugned judgment was liable to be set aside-However keeping in view right of accused for speedy trial, trial Court requested to dispose of the matter within six months."

He has also relied on the decision of the Supreme Court reported in AIR 2000 SC 3330 (K.RAMAKRISHNA AND OTHERS VS. STATE OF BIHAR AND ANOTHER), wherein it has been held as follows:

> "6.On perusal of FIR, the final report under Section 173 of the Code of Criminal Procedure and all other documents accompanying it, we are satisfied that no case is made out against any of the appellants and the pendency of the proceedings against them before the Magistrate is an abuse of process of Court. The appeal is allowed and the order of the order of the High Court dated 8th April, 1997 and Magistrate dated 6-7-1996 are quashed and the appellants discharged in terms of Section 239 of the Code

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of Criminal Procedure."

4.Per contra, the learned Special Public Prosecutor for CBI Cases submits that this ground is one of the grounds raised at the time when discharge application was filed before the trial court. There is a specific provision in the Prevention of Corruption Act. Section 19(3)(a) of the Act reads as follows:

> "(a)no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice had in fact been occasioned thereby;"

Similar provision is also embodied in Section 465 Cr.P.C. After receiving elaborate arguments from the counsel for the petitioner, the ground raised by the petitioner has been refused. Under such circumstances, the petitioner must establish before this Honourable Court that the failure of justice had in fact been occasioned and unless it is substantiated, it is not a fit case to interfere. The learned Special Public Prosecutor relied on a case reported in 2004 SCC (Crl) 2140 (STATE BY POLICE INSPECTOR VS. T.VENKATESH MURTHY), wherein it has been held as follows:

> "14.In the instant case neither the trial court nor the High Court appear to have kept in view the requirements of sub-section (3) relating to question regarding "failure of justice". Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. The same logic also applies to the appellate or revisional court."

He has also relied on a decision of the Supreme Court reported in 1999 SCC (CRL.)1494 (CENTRAL BUREAU OF INVESTIGATION VS. V.K.SEHGAL AND ANOTHER), wherein the Supreme Court has held thus:

> "Section 465 CrPC debars a court of appeal or revision from reversing a finding (or even an order of conviction and sentence) on account of any error or irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining whether want of valid sanction had in fact occasioned failure of justice the sub-section (2) of S.465 enjoins on the court a duty to

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consider whether the accused had raised any objection on that score at the trial stage."

The learned Special Public Prosecutor also relied on a decision of the Supreme Court reported in 1991 (3) SCC 655 (K.VEERASWAMI VS. UNION OF INDIA AND OTHERS), wherein it has been held as follows:

"It seems to us that these observations were not intended to lay down the law that the authority competent to grant sanction for prosecution of public servant should be vertically superior in the hierarchy in which the office of the public servant exists. That was not the issue in that case. The observations therefore, are not meant to be and ought not to be regarded as laying down the law. It has been said almost too frequently to require repetition that judgments are not to be read as statutes. In our opinion, it is not necessary that the authority competent to give sanction for prosecution or the authority competent to remove the public servant should be vertically superior in the hierarchy in which the office of the public servant exists. There is no such requirement under Section 6. The power to give sanction for prosecution can be conferred on any authority. Such authority may be of the department in which the public servant is working or an outside authority. All that is required is that the authority must be in a position to appreciate the material collected against the public servant to judge whether the prosecution contemplated is frivolous or speculative."

5.The learned Special Public Prosecutor further submitted that TIDCO is the complainant and the deposit of Rs.1 Crore having been made with the first accused, the first accused entered into conspiracy with the accused Nos.2 to 4 and the funds have been diverted without the consent of the complainant, resulting in the registration of the case. It is further submitted that an elaborate discussion has been made, while dismissing the discharge petition filed by the petitioner. The learned trial Judge has come to a conclusion that prima facie materials are available to substantiate the offence. The elaborate discussion of the facts are not necessary at the time of framing of charges. The learned Special Public Prosecutor relied on a case reported in 1996 SCC (Cri) 820 (STATE OF MAHARASHTRA AND OTHERS VS. SOM NATH THAPA AND OTHERS), wherein it has been held in paragraph 32 as follows:

"32...that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it

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can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

6.The learned Special Public Prosecutor further submits that the case has been taken on file during 1997 and the petitioner, for some reason or other, has filed petitions to protract the proceedings. The petitioner has also involved in two other cases and has filed similar petition to quash the proceedings before the High Court and the same was dismissed as withdrawn. The present petition is also of similar nature.

7.I have perused the materials available on record and heard the submissions made by both parties. While dismissing the discharge petition, an elaborate discussion has been made and the learned trial Judge has come to a conclusion that sanction issued by the Chief General Manager is a valid sanction. In the quash petition as well as at the time when the counsel for petitioner made his submissions, the prejudice caused on account of sanction accorded by the sanctioning authority was not established. More over, the petitioner could not establish that failure of justice had in fact been occasioned on account of the sanction accorded by the Chief General Manager. The contention of the prosecution is that the Chief General Manager is the competent authority to accord sanction to the petitioner. More over, only during the course of trial, the prejudice caused may be established. When such an opportunity is always available to the petitioner, it is inappropriate to approach this Honourable Court by way the petition to quash the proceedings.

8.The learned counsel for the petitioner submits that it is not the case of prosecution that the amount deposited by TIDCO has been misappropriated, but by way of portfolio management, the fund has been given to accused Nos.2 to 4 as short term loan and the interest at the rate of 23% p.a. has been collected, which was accepted by the complainant. This type of portfolio management is permissible in the banking management. Further, it is submitted that no loss has been caused to the complainant. Whether the accused has diverted the funds on account of portfolio management or otherwise is a matter for trial and it has to be established during the course of trial. The argument of the counsel for the petitioner cannot be appreciated at this stage. The judgments cited by the counsel for the petitioner is not applicable for the present facts and circumstances of the case. On perusal of the materials available on record, I find, there are prima facie materials to substantiate the offence. Further, I do not find any irregularity in the sanction accorded by the sanctioning authority.

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9.Under these circumstances, the criminal original petition filed by the petitioner to quash the proceedings is dismissed. Consequently, connected Crl.MP is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. THE PRINCIPAL SPECIAL JUDGE
FOR CBI CASES (IX ADDITIONAL
CITY CIVIL COURT), CHENAI 104.

2. THE X ADDITIONAL SPECIAL
COURT FOR CBI CASES,
CHENNAI.

3. THE SPECIAL PUBLIC
PROSECUTOR FOR CBI CASES,
CHENNAI.

4. THE INSPECTOR OF POLICE
CBI ANTI CORRUPTION BRANCH,
III FLOOR, SHASTRI BHAWAN,
CHENNAI 6.

+1cc to M/s. Lakshmipriya Associates Sr 53693

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